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August 6, 2019

Via electronic mail to: Kristin.Gousse@dep.state.fl.us

SUBJECT: Chapter 62-640, F.A.C. Biosolids Rulemaking
Public Comment Period
Martin County Comments on Proposed Revisions

Dear Ms. Gousse:

Martin County appreciates the opportunity to provide comments on the Florida Department of Environmental Protection's (Department) proposed revisions to Chapter 62-640, F.A.C., developed to address recommended actions of the Biosolids Technical Advisory Committee following their review of management practices and potential nutrient impacts related to the land application of biosolids.

Un-revised Rule 62-640.100 (1) and revised (1)(a), F.A.C., titled **Scope, Intent, Purpose, and Applicability**, states the following:

(1) All domestic wastewater treatment facilities which use biological treatment processes generate biosolids as a by-product of the treatment process. The Department finds that unregulated use, disposal, or land application of biosolids poses a threat to the environment and public health.

(a) It is the intent of the Department in this chapter to regulate the management, use, and land application of biosolids so as to ensure protection of the environment and public health, including minimizing the migration of nutrients, nitrogen and phosphorus that impair or contribute to the impairment of waterbodies.

According to the above Rule, the Department has recognized that biosolids, if unregulated, pose a "threat to the environment and public health." Moreover, in the Notice of Development of Rulemaking (Rulemaking Notice), required pursuant to Section 120.54(2)(a), Florida Statutes, the Department seeks to "ensure the proper management and permitting criteria for the land application of biosolids" through the current rulemaking on biosolids. Thus, the Department

recognizes that biosolids contain nutrients and nutrients contribute to the impairment of waterbodies in the state of Florida. This rulemaking process is a valuable attempt to reduce nutrient contributions to waters of the state as a result of biosolids applied to land.

Under Chapter 62-640, F.A.C., there are three classifications of biosolids: AA, A and B. The only parameters that separate Class A and B biosolid products from a Class AA product are the pathogen, vector attraction, and metal concentrations, according to the definition of a Class AA biosolid under Rule 62-640.200(10), F.A.C. In fact, the nutrient content among all biosolid classes is, as a practical matter, the same. Another similarity among the biosolid products is that, unless the product is disposed at a landfill, they are all deposited on land. The stacking, or the manner in which the product is placed on land, may be different. The purposes may be different. But the fact that all three classified products are deposited on land in Florida is the same.

However, under the existing and proposed rules, Class AA is exempt from regulatory requirements imposed on Class A and B. The Class AA exemptions include, but are not limited to, soil monitoring, ground water monitoring, nutrient management plans and runoff prevention requirements. *See* Rule 62-640.850, F.A.C. Class AA is also exempt from setback distances from surface waters. Standard record keeping requirements that are applicable to Class A and B are inapplicable to Class AA in Florida even though the nutrient content is neither eliminated nor reduced in the Class AA production process. Therefore, all classes can contribute the same nutrient loading to surface waters, except that Class AA can contribute more nutrient loading to surface water under the existing and proposed rules because it is exempt from setback requirements and application limits.

In 2018, Blue Cypress Lake in Indian River County experienced a massive Harmful Algal Bloom (HAB). Studies showed, and the Department accepted the findings, that the cause was likely biosolid runoff from nearby fields. Although the biosolid product was Class B, the nutrient runoff would have been the same if Class AA had been applied because the biosolid process does not reduce or eliminate nutrients.

In March of this year, Martin County staff observed that Class AA biosolids had been recently placed on vacant land near the 710 Canal. This property is within the geographic boundaries of the St. Lucie River Water Protection Plan (SLRWPP). The St. Lucie River watershed is a regional watershed within the Northern Everglades and Estuary Protection Program (NEEPP) and is designated as a critical water resource of the state. Sec. 373.4595(1)(a), Fla. Stat. Among other things, NEEPP recognizes the Legislature's intent to "protect and restore surface water resources and maintain compliance with water quality standards...and downstream receiving waters..." *Id.* At (1)(l), Fla. Stat. The Legislature further required that NEEPP "shall provide for consideration of all water quality issues needed to meet the Total Maximum Daily Load (TMDL) and **shall include ... refinement of existing regulations...**" *Id.* (emphasis added). The actual SLRWPP Plan,

published in 2009, identifies the state's water quality objectives that include reduction of "pollutant loads by improving management of pollutant sources throughout the watershed." SLRWPP, Sec. 3.3.2.

SLRWPP, a component of NEEPP, prohibits disposal of biosolids within the St. Lucie river watershed "unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to the nutrient loading in the watershed." Sec. 373.4595 (4)(d)5., Fla. Stat. Class AA is, however, exempted from this prohibition and no other conditions, such as monitoring or setbacks from surface water, are required for Class AA regardless of the nutrient content or potential for unrestricted runoff.

Because the Legislature in Section 373.4595(4)(d)5., Florida Statutes, has exempted Class AA from its biosolid prohibition within the SLRWPP boundaries and the Department, in Rule 62-640.850, has exempted Class AA from record keeping requirements, there is no way to know where and how much Class AA may contribute to loading of nutrients in soil, groundwater and surface waters in the state of Florida much less in critical watersheds of south Florida. This is in direct conflict with the Legislatures intent in NEEPP, the Department's proposed Rule 62-640.100(1)(a), and the Rulemaking Notice that presents the Department's purpose and intent of the proposed changes are to "ensure proper management" of biosolids and help achieve the Department's intent to "**[minimize] the migration of nutrients, nitrogen, and phosphorous that impair or contribute to the impairment of waterbodies.**" See, proposed Rule 62-640.100(1)(a), F.A.C., above. (emphasis added).

The St. Lucie River and Estuary within Martin County receive runoff from discharged nutrient-rich water from Lake Okeechobee, nutrient-rich inflow from Central and Southern Florida (C&SF) system canals such as the C-23, C-24, and C-25, and other canals and tributaries. See, Sec. 1.1.3, SLRWPP, 2009. Even though these waterways receive runoff from outside sources (in addition to local urban runoff), the County is obligated to meet St. Lucie River and Estuary Basin Management Action Plan's (BMAP's) nutrient standards within established deadlines.

According to the Department, a BMAP is the "blueprint" for restoring impaired waters by reducing nutrient loadings to meet the adopted TMDL. The U.S EPA has explained that a TMDL is the calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant. A TMDL determines a pollutant reduction target and allocates load reductions necessary to the source(s) of the pollutant. The BMAP contains strategies designed to assist the local government in meeting the TMDL. BMAPs are ultimately adopted by Secretarial Order and enforceable against the local entity by the Department if the TMDL standards in the BMAP are not met, regardless of the source of nutrients. If the local entity does not meet the TMDL standards in the BMAP and the Department enforces the terms of the BMAP, the local entity could be subject to

civil penalties and/or fines. Martin County, therefore, deems this rulemaking process to have potentially significant beneficial impacts to the future water quality within the county's boundaries, for which it is responsible under the BMAP, its tax payer based financial interests, as well as the health of the near shore Florida Reef Tract. Conversely, as a local government obligated under an enforceable BMAP in an area that receives nutrient-rich water, some of which is likely from biosolids runoff, Martin County does not consider the amendments to the rule, as proposed thus far, to adequately address nutrient contribution from Class AA biosolids in the Department's effort to "[minimize] the migration of nutrients."

Thus, Martin County offers the following recommendations for Chapter 62-640, F.A.C. rulemaking:

A. Regarding Rule 62-640.850, Distribution and Marketing of Class AA Biosolids, the following exemptions for Class AA should be removed from the Rule so that nutrient runoff from Class AA can be regulated the same as Class A and B nutrient runoff:

- Rule 62-640.500 (require a Nutrient Management Plan)
- 62-640.650(3)(b) through (d) (requires soil and groundwater monitoring, and lab certification)
- 62-640.650(4)(c) through (j)(requires record keeping for biosolid application volumes, application zones, 5 year monitoring records, hauling records, etc..)
- 62-640.650(5)(d) through (e) (requires that summaries of monitoring and other record keeping must be submitted to the Department)
- 62-640.650(6) (g) (requires Class AA haulers to notify the Department within 24 hours if certain pathogen, vector attraction or metal concentrations are not met)
- 62-640.700(1) through (4)(requires permits and compliance with NMPs)
- 62-640.700(6) through (11) (storage, stockpiling, setback and, runoff prevention criteria)
- 62-640.800 (additional land application criteria)

B. Regarding current proposed changes:

- 62-640.200 - Add a definition of BMAP between lines 5 and 6

- 62-640.400(11) – “This prohibition does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with Rule 62-640.850, F.A.C.” Remove the line or add “with the exception of areas that are designated as BMAP areas.”
- 62-640.400 (12) - “This prohibition does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with Rule 62-640.850, F.A.C.” Remove the line or add “with the exception of areas that are designated as BMAP areas.”
- 62-640.650 (b) (2) – “Representative soil monitoring parameters in subsection 62-640.700 (5) , F.A.C., shall be conducted at application sites for each application zone prior to application site permitting, except sites only permitted for Class AA biosolids.” Add “with the exception of areas that are designated as BMAP areas.”
- 62-640.850 (2) – “Distributed and marketed biosolids or biosolids products shall be distributed and marketed as fertilizer...” Need to ensure that Class AA fertilizer biosolids can be distinguished from other biosolids.
- 62-640.700 (10) - Define how the Department will determine the “seasonal high-water table.”

C. Specifically for BMAP regions:

If the exemptions for Class AA are not removed, Rules 62-640.850 or 62-640.700 should be amended so that Class AA biosolids meet the same requirements for Class A and Class B in designated BMAP regions and include:

- Nutrient management plan and biosolids storage plan
- Soil monitoring
- Groundwater monitoring
- Setback requirements
- Record keeping and biosolids application site log
- Biosolids application site annual summary
- Cumulative application limits

Rule 62-640.400 (200), F.A.C. states:

Land application of biosolids shall not result in a violation of Florida surface water quality standards.

Class AA products may be called “fertilizer,” but they are, in fact, biosolids as defined in NEEPP, Rule 62-640, and by the U.S. EPA.


CONCLUSION

Martin County’s ability to meet the nitrogen and phosphorous TMDL’s under the enforceable BMAP continues to be jeopardized until land application or placement of biosolids in BMAP areas and upstream of BMAP areas is restricted. The County’s efforts will be further complicated by continuing to exempt Class AA biosolids from regulations (monitoring, setbacks, record keeping, etc.). Class AA exemptions for monitoring, set back requirements, and nutrient management plans at the very least, should be removed so that the Department can more accurately allocate locations of nitrogen and phosphorous loads in its effort to “[minimize] the migration of nutrients that impair or contribute to the impairment of waterbodies.” Removing exemptions and requiring the same nutrient monitoring, set back requirements, nutrient management plans and record keeping, as required for Classes A and B, will provide a better understanding of nutrient loading statewide and provide a stronger pathway to success for the goals outlined in NEEPP. Because nutrient concentrations and runoff are no different for Classes AA, A, and B, regulating placement of these products on land in the same way will also allow BMAP obligations to be more fairly applied to local governments that are responsible for reducing nutrients in their receiving water bodies.

Given the points outlined above, uniform regulation of all biosolid products would allow for greater accuracy in determining nutrient load allocations at their sources. Uniform regulation would also allow for more efficiency in reaching the goal of restoring impaired waters rather than spending millions of taxpayer dollars on downstream water restoration projects. Martin County urges the Department to incorporate these recommendations and, although outside the Chapter 120 rulemaking process, the County also urges the Department to expeditiously move forward on technology-based processing solutions for biosolids.

We look forward to further engagement in this rulemaking process.

Sincerely,



Don Donaldson, P.E.
Deputy County Administrator